Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

No. 316.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., PETITIONER,

vs.

SALLIE E. HILLMON, RESPONDENT.

Reply to Objections of Respondent to Motion of Petitioner in Regard to Record.

A sufficient reply to the objections presented by respondent is that if the preliminary requirement as to costs of the clerk of the circuit court of appeals were complied with, the only possible return he could make to the writ of certiorari would be the sending up of the identical record already laid before this court as the one upon which the circuit court of appeals rendered its judgment, and upon which this court ordered its writ to issue. No other return is possible in obedience to that writ.

The only question now involved is whether the clerk may demand certain costs of the petitioner as a condition of sending up, in obedience to the writ, a transcript of the

record upon which the court below heard the cause and rendered judgment on the merits. If all his demands were complied with, the only possible obedience to the writ would be the return of this identical record.

Whether that record was one upon which the court below might properly proceed to hear and determine the cause is not a question to be tried on this application. The writ here requires the clerk to send to this court the record upon which the court below did in fact proceed to hear and determine the cause upon its merits, that its judgment may be reviewed. Whatever that record may be, it is the one on which a judgment on the merits in favor of the objectors on this present motion was rendered in the court below. To the order of this court, that the actual record be sent up to it for review of the judgment rendered thereon, it is no answer to say that the record was irregular and faulty, and that for that reason this court may not see it or review the judgment.

Nevertheless it seems plain that the matters of objection adduced are without foundation, either here or in the court below, where some of them were in fact presented and overruled; for, notwithstanding them, the court proceeded to hear and decide the case upon the merits. This is shown by the statement on page 5 of respondent's brief filed in objection to this motion. Obviously they were all met there, as they are here, by the order of that court shown on page 2012 of the printed record filed with the petition for the writ of certiorari.

That the printed transcript of the entire record in this cause in the circuit court of appeals for the eighth circuit,

which was filed in this court upon petitioner's application for the writ of certiorari, is a true copy of that record, and that the printed copy of the transcript of the record of said cause in the circuit court of the United States for the district of Kansas, which is incorporated therein, is a true copy of that transcript of the record on which said cause was heard in the circuit court of appeals, is not disputed at all. On the presentation of the petition for certiorari, that record was verified by the affidavit of counsel for petitioner as being the record on which the case was heard below, and upon that there is no question made. That record was printed under the direction and supervision of the clerk of the circuit court of appeals for use in that court on the hearing of the cause, and there is on file in the office of the clerk of this court a letter to him, dated May 7, 1901, from the clerk of the circuit court of appeals, transmitting certain copies of this printed record for use in this cause, in which he says: "I will state that these records have not been out of my possession since the same were printed."

As we have already stated, if the requirement as to fees of the clerk of the circuit court of appeals, to whom this writ of certiorari is directed, were complied with, he must obey the writ and make his return thereto in regular form; and no other return is possible, in the nature of the case, but to certify up to this court the identical record which is now before it.

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EDWARD S. ISHAM,
Counsel for Petitioner.